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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Charles Edward Byrd,

10 Plaintiff,

11 vs.

12 Joseph M. Arpaio et al.,

13 Defendants.

No. CV04-2701-PHX-NVW

ORDER

14 Before the Court is Plaintiff's Motion/Application for Attorneys' Fees (Doc. 174).
15 This motion includes fees claimed by Fennemore Craig, P.C. (trial counsel) and by Mr.
16 Jarrett Green (counsel on appeal). Defendants and Fennemore Craig have since settled
17 their fees dispute, mooted that portion of the motion. (Doc. 179.) Mr. Green continues
18 to claim his fees.


19 In the Ninth Circuit, a party/attorney seeking fees incurred on appeal must first
20 move the appellate court for those fees. *Cummings v. Connell*, 402 F.3d 936, 948 (9th
21 Cir. 2005); *Gametech Int'l, Inc. v. Trend Gaming Sys., L.L.C.*, 380 F. Supp. 2d 1084,
22 1093–94 (D. Ariz. 2005); *Nader v. Brewer*, No. CV-04-1699-PHX-FJM, 2009 WL
23 811450, at *1 (D. Ariz. Mar. 27, 2009). Such a motion was required within 14 days of
24 the mandate. Ninth Circuit Rule 39-1.6(a). The Ninth Circuit, in its discretion, could
25 then refer the motion to the district court. *Id.* 39-1.8.

26 This Court's review of the Ninth Circuit's docket shows that Byrd filed no request
27 for fees incurred on appeal, either as part of his briefs or separately. The mandate is also
28 silent about fees.

Apart from this procedural impediment, Mr. Green would be entitled to a substantial award of fees. But this Court may not make such an award unless the Court of Appeals modifies its mandate to allow consideration of such a request.

IT IS THEREFORE ORDERED that Plaintiff's Motion/Application for Attorneys' Fees (Doc. 174) is DENIED.

Dated: December 30, 2011.


Neil V. Wake
United States District Judge